

Jeanne L. Zimmer (SBN: 123321)
ZimmerJ@cmtlaw.com
J. Grace Felipe (SBN: 190893)
Felipeg@cmtlaw.com
CARLSON & MESSER LLP
5959 W. Century Boulevard, Suite 1214
Los Angeles, California 90045
(310) 242-2200 Telephone
(310) 242-2222 Facsimile

Atorneys for Defendant,
NRA GROUP, LLC d/b/a NATIONAL RECOVERY AGENCY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TO PLAINTIFF RICHARD CARUSO, IN *PRO SE*:

PLEASE TAKE NOTICE that on November 28, 2016, or as soon thereafter as this matter may be heard, in Courtroom 4B of the above-entitled Court, located at 221 West Broadway, Suite 4145, San Diego, California 92101, Defendant NRA GROUP, LLC d/b/a NATIONAL RECOVERY AGENCY (“NRA”) will, and hereby does, move for judgment on the pleadings pursuant to *Federal Rule of Civil Procedure* 12(c). This Motion is made on the grounds that Plaintiff filed and dismissed an earlier Complaint against NRA for the same claims in the same court, ***with prejudice***. The doctrine of *res judicata* prohibits a second suit between the same

1 parties on the same claims. Therefore, Plaintiff's subsequent lawsuit is barred and
2 his claims against NRA are precluded as a matter of law.

3 This Motion will be based on this Notice of Motion and Motion, The
4 Memorandum of Points and Authorities filed herewith, the Request for Judicial
5 Notice, and the pleadings and papers filed herein. NRA is in compliance with No.
6 4A in the Standing Order for Civil Cases for the Hon. Cynthia Bashant. This motion
7 is exempt from the meet-and-confer requirement prior to filing this noticed Motion
8 because Plaintiff is appearing *pro se* and is not an attorney. Nonetheless, prior to
9 filing, defense counsel contacted Plaintiff *pro se* and discussed the substance of this
10 motion verbally and in writing, on October 18, 2016.

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12 DATED: October 20, 2016

CARLSON & MESSER LLP

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14 By: /s/ J. Grace Felipe
15 Jeanne L. Zimmer
16 J. Grace Felipe
17 Attorneys for Defendant,
18 NRA GROUP, LLC d/b/a
19 NATIONAL RECOVERY
20 AGENCY
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MEMORANDUM OF POINTS AND AUTHORITIES

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I. INTRODUCTION

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19 Plaintiff in *pro se*, RICHARD CARUSO (“Plaintiff”) filed two identical
20 lawsuits against Defendant NRA GROUP, LLC d/b/a NATIONAL RECOVERY
21 AGENCY (hereinafter “NRA”) in the United States District Court – Southern
22 District of California, within the span of four months. Both lawsuits allege violations
23 of the Telephone Consumer Protection Act, 47, U.S.C. §§ 227 *et seq.* (“TCPA”), Fair
24 Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* (“FDCPA”), Fair Credit
25 Reporting Act, 15 U.S.C. §§ 1681 *et seq.* (“FCRA”), California Consumer Credit
26 Reporting Agencies Act, *Civil Code* §§ 1785 *et seq.* (“CCRAA”) and California
27 Rosenthal Fair Debt Collection Practices Act, *Civil Code* §§ 1788 *et seq.* (the
28 “Rosenthal Act”). Plaintiff dismissed his initial lawsuit against NRA with prejudice.
Plaintiff now seeks judgment on the pleadings on Plaintiff’s subsequent Complaint on
the grounds that he is precluded from bringing the same claims against NRA in this
court.

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II. STATEMENT OF FACTS

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19 In the past seven months, Plaintiff filed various complaints in the United States
20 District Court – Southern District of California asserting claims under the TCPA,
21 FDCPA and other consumer statutes (*Richard Caruso v. Encore Capital Group, et*
al., Case No. 3:16-cv-00586-BAS-BGS; *Richard Caruso v. California Business*
Bureau, et al., Case No. 3:16-cv-00587-WQH-JMA; *Richard Caruso v. Merchants*
Credit Association, et al., Case No. 3:16-cv-00895-BAS-ABS; *Richard Caruso v.*
California Recovery Bureau, Case No. 3:16-cv-00902-BTM-DHB). In particular,
Plaintiff filed two against NRA.

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1 **A. The Initial Complaint**

2 On March 2, 2016, Plaintiff filed a Complaint for Damages and Injunctive
3 Relief under the TCPA, FDCPA, FCRA, CCRAA and Rosenthal Act against NRA,
4 TransUnion, LLC (“TransUnion”) and Experian Information Solutions, Inc.
5 (“Experian”), styled *Richard Caruso v. National Recovery Agency, et al.*, Case No.
6 3:16-cv-00534-WQH-JMA (hereinafter referred to as “1st Lawsuit”). [See Request
7 for Judicial Notice (hereinafter “RJN”), No. 1.] Plaintiff served NRA with the
8 Summons and Complaint in the 1st Lawsuit. [See Civil Docket, No. 6, attached as
9 Exhibit 3 to RJN No. 3.] On August 22, 2016, Plaintiff filed a Voluntary Dismissal
10 of the 1st Lawsuit with Prejudice. [See RJN No. 2.] In Plaintiff’s Voluntary
11 Dismissal with Prejudice, he states:

12 Comes now, RICHARD CARUSO, Plaintiff in the above-
13 entitled case appearing before the honorable court In Pro
14 Se, freely and voluntarily DISMISSES the above-entitled
15 action against ALL named defendants with prejudice. I
16 hereby request that this case as it appliance to all named
17 defendant should be closed forthwith, and dismissed
18 immediately with prejudice.

19 [Exhibit 2 attached to RJN. (Emphasis in original.)]

20 **B. The Subsequent Complaint**

21 On June 29, 2016, Plaintiff filed another Complaint for Damages and
22 Injunctive Relief under the TCPA, FDCPA, FCRA, CCRAA and Rosenthal Act, but
23 only named NRA as a defendant. Neither Transunion nor Experian are parties. These
24 claims are the same as those asserted in the 1st Lawsuit although Plaintiff apparently
25 never informed the Court at any time that both actions are related.

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1 **III. ARGUMENT**

2 **A. Legal Standard**

3 Federal Rule of Civil Procedure 12(c) provides that a party may move for
4 judgment on the pleadings “[a]fter pleadings are closed—but early enough not to
5 delay trial.” A Rule 12(c) motion challenges the legal sufficiency of the opposing
6 party’s pleadings. It provides a vehicle for summary adjudication on the merits which
7 “may save the parties needless and often considerable time and expense that would
8 otherwise be incurred during discovery and trial.” *Perez v. Wells Fargo & Co.*, 75
9 F.Supp.3d 1184, 1187 (N.D. Cal. 2014) (quoting text).

10 A motion for judgment on the pleadings under Rule 12(c) is “functionally
11 identical” as a motion to dismiss under Rule 12(b)(6), except a Rule 12(c) motion is
12 made after the answer is filed. In deciding a Rule 12(c) motion, courts apply the
13 same standards of a Rule 12(b)(6) motion. *Cafasso, U.S. ex rel. v. General Dynamics*
14 *C4 Systems, Inc.*, 637 F.3d. 1047, 1054 (9th Cir. 2011); *Erickson v. Boston Scientific*
15 *Corp.*, 846 F.Supp.2d 1085, 1089 (C.D. Cal. 2011), and *Ross v. U.S. Bank Nat’l*
16 *Ass’n*, 542 F.Supp.2d 1014, 1023 (N.D. Cal. 2008). As with Rule 12(b) motions, the
17 court must assume the truthfulness of the material facts alleged in the pleadings in
18 finding that the moving party is entitled to judgment as a matter of law. *Fleming v.*
19 *Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). Thus, to survive a motion for judgment
20 on the pleadings, the complaint must contain sufficient factual allegations, even if
21 accepted as true, to state a claim that is plausible on its face. *Chavez v. United States*,
22 683 F.3d 1102, 1108-09 (9th Cir. 2012).

23 As set forth herein and in the Request for Judicial Notice, NRA is entitled to
24 judgment as a matter of law because Plaintiff is precluded from raising the same
25 claims against NRA in this Court when he completely dismissed the 1st Lawsuit
26 against NRA with prejudice.

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B. Plaintiff's Action Against NRA is Barred Because He Voluntarily Dismissed the 1st Lawsuit With Prejudice

The effect of a voluntary dismissal *with prejudice* operates as an adjudication on the merits, barring further action on the same claims in the same court. *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505, 121 S.Ct. 1021; see also *Goddard v. Security Title Ins. & Guarantee Co.*, 14 Cal.2d 47, 51 (1939)(stating that a dismissal “with prejudice” evinces “[t]he intention of the court to make [the dismissal] on the merits.”). In *Semtek*, the Supreme Court interpreted a dismissal *prejudice* is equivalent to an “adjudication on the merits.”

We think the key to a more reasonable interpretation of the meaning of “operates as an adjudication upon the merits” in Rule 41(b) is to be found in Rule 41(a), which in discussing the effect of voluntary dismissal by the plaintiff makes clear that an “adjudication upon the merits” is the opposite of a “dismissal without prejudice.” *Semtek, supra*, 531 U.S. at 505.

Rule 41(a)(1)(B) states as follows:

“Unless the notice of stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.”

Thus, the Supreme Court reasoned that “the effect of ‘adjudication upon the merits’ default provision of Rule 41(b) . . . is simply that, unlike a dismissal ‘without prejudice,’ the dismissal in the present case barred refiling of the same claim in the United States District Court for the Central District of California.” *Semtek, supra*, 531 U.S. at 506.

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1 Here, Plaintiff filed duplicate complaints against NRA asserting claims under
2 the TCPA, FDCPA, FCRA, CCRAA and Rosenthal Act concerning the same time
3 period, facts and Defendant. The 1st lawsuit was filed on March 2, 2016. When
4 Plaintiff voluntarily dismissed the 1st lawsuit, he unequivocally stated in the notice
5 that he “freely and voluntarily DISMISSES the above-entitled action against ALL
6 named defendants with prejudice. I hereby request that this case as it appliance to all
7 named defendant should be closed forthwith, and dismissed immediately with
8 prejudice.” [See Exhibit 2 attached to RJN.] In effect, Plaintiff’s dismissal of the 1st
9 action with prejudice thereby bars Plaintiff from pursuing the instant action for the
10 same claims brought in the same court. As a matter of law, NRA is entitled to
11 judgment on Plaintiff’s Complaint based on the doctrines of *res judicata* and claim
12 preclusion, and his dismissal of NRA with prejudice.

IV. CONCLUSION

Plaintiff sued NRA once in this court and voluntarily dismissed his claims with prejudice. Plaintiff is thereby precluded from pursuing his action in this Court for the same claims against NRA. In light of the foregoing, NRA respectfully requests that the Court GRANT NRA's Motion for Judgment on the Pleadings, enter judgment in favor of NRA and dismiss Plaintiff's entire action, as a matter of law.

DATED: October 20, 2016

CARLSON & MESSER LLP

By: /s/ J. Grace Felipe
Jeanne L. Zimmer
J. Grace Felipe
Attorneys for Defendant,
NRA GROUP, LLC d/b/a
NATIONAL RECOVERY
AGENCY